(1)

91-2041

No.

Supreme Court, U.S.
FILED
JUN 22 1992

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

DAVID G. HARRIS,

Petitioner,

v.

FIRST NATIONAL BANK OF SPENCER and,
CLARA BOGGS and SYDNEY BOGGS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DAVID G. HARRIS, Pro Se
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PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

QUESTIONS PRESENTED FOR REVIEW

1. Did the United States Court of Appeals for the Fourth Circuit err by affirming the reasoning of the District Court's order which Court dismissed Petitioner's notice of appeal of an adverse Bankruptcy Court order as being untimely filed?

2. Did the United States District Court, Southern District of West Virginia, Parkersburg Division err in denying review of the Bankruptcy's Court's order or judgment for lack of jurisdiction on the ground that the notice of appeal by petitioner was untimely filed?

3. Does receipt of mail of the orders of the Bankruptcy Court ten days or more from the signing of the orders by the Court constitute "excusable neglect", particularly, since no United States Postal Service date stamp appears on the envelopes?

4. Does the date of entry [EOD] of a Bankruptcy Court order shown on the Court's docket sheet control the time to be tolled?

5. Were petitioner's notice of appeal timely filed?

PARTIES INVOLVED

In addition to the parties named in the caption, Ernest Douglas, Bankruptcy Trustee did not participate in the proceedings in the Fourth Circuit Court of Appeals.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

No. _____

DAVID G. HARRIS,

Petitioner,

v.

FIRST NATIONAL BANK OF SPENCER and,
CLARA BOGGS and SYDNEY BOGGS,

Respondents.

PETITION FOR WRIT OF CERTIORARI

David G. Harris, Petitioner, Pro se, respectfully petitions this Court to issue a Writ of *Certiorari* to the United States Court of Appeals for the Fourth Circuit to review that Court's judgment.

OPINIONS BELOW

The opinion by the United States Court of Appeals for the Fourth Circuit appears as Appendix A and is an unpublished opinion No. 191-1767, decided February 27, 1992. The opinion of the United States District Court for the Southern District of West Virginia, Parkersburg's Division appear as Appendix B and the orders of the Bankruptcy Court appear as Appendices C and D.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

STATEMENT

The controversy arose as a result of the execution of a deed of trust for the purchase of 156 acres known as the Boggs tract by Debtor Joseph Moore and David G. Harris. David G. Harris filed Bankruptcy on January 8, 1987. Joseph Moore filed a Chapter 13 Bankruptcy petition on April 4, 1988 subsequently converted to a Chapter 7.

The extensive litigation arose as a result of The First National Bank of Spencer failing to institute foreclosure proceedings on the deed of trust and the installment attached thereto on January 8, 1987 when the event of default occurred upon the filing of the bankruptcy petition of David G. Harris.

(a) The Bankruptcy Court knew of the bankruptcy of David G. Harris, which was considered to be interwined with the Joseph Moore Bankruptcy. In the Harris Bankruptcy, Judge Ronald Pearson issued an order under date of January 28, 1987. "for all secured creditors to file their secured status with the trustee and the value of the collateral." The secured creditors ignored the order of the court.

(b) The First National Bank of Spencer hereinafter referred to as "the Bank" failed to foreclose on the property involved, namely the 176 tract solely in the name of David G. Harris.

(c) The trustee in the Harris Bankruptcy failed to administer this asset of 176 acres valued at

more than $50,000 as well the 1/2 interest in the Trailer valued at over $10,000 as well as the 1/2 interest in 156 acres known as the "Boggs Tract" valued at more than $70,000 as well as the interest in a satellite disk valued at more than $1,200 as well as the interest in the oil and gas rights valued at over $10,000.

(d) In August of 1987, the Bankruptcy trustee sold the 1/2 interest of Petitioner Harris' interest in the 156 acres to Debtor Joseph Moore for $390.05, subject to the terms in the deed of trust held by the bank. At this point in time, the 176 acres known as the Harris Tract was still solely in the name of Petitioner, David G. Harris.

(e) Charles McCarty, an attorney representing David G. Harris and Joseph Moore and the attorney who drew up the settlement papers and representing both the first and second mortgage holders was trustee on the deed of trust. He resigned as trustee and no substitute trustee was appointed during the interim.

(f) After the trustee on the Deed of Trust's had resigned, Debtor Moore began timbering operations on the Boggs' tract, whereupon the bank filed a civil action to prohibit Mr. Moore from committing waste. Petitioner Harris was not apprised of this happening even though he still maintained the collateral interest of 176 acres which was part of the deed of trust.

(g) By agreement between Debtor Moore, the timbering Company and the Bank and by order of the Court, the proceeds of the Timbering due debtor Moore was placed in an interest bearing

savings account valued at more than $4,500. The proceeds are still part of the unadministered assets of debtor Moore.

(h) The Bank still had not foreclosed on the Deed of Trust, nor did the bank seek relief from the Bankruptcy Court. As a collateral holder on the first deed of trust Petitioner has an interest in the proceeds of the timbering.

(i) Subsequently, over the objections of the Petitioner, a substitute trustee was appointed in February of 1988. The substitute trustee, upon his appointment, advertised the properties for sale and on April 4, 1988, Debtor Moore filed a Chapter 13 bankruptcy thereby staying the sale. The 176 acre tract was still in the name of Petitioner David G. Harris.

(j) On February 17, 1989, Petitioner Harris by himself filed a praecipe indicating that he was a party in interest and collateral holder in the Chapter 13 case. Subsequently the Chapter 13 case was converted to a chapter 7 case.

(k) On June 22, 1989, Petitioner Harris filed a petition for an adversary hearing in the Moore Bankruptcy.

(l) On November 15, 1989, The Bank filed a Motion to abandon the real estate of debtor Moore. Objections were filed by Debtor Moore and Petitioner Harris and a hearing was held on December 20, 1989. At this hearing, the Court on Page 45 of the transcript, indicated that an adversary proceeding would be held. The court on Page 45 also instructed the parties to contact his

law clerk for an adversarial hearing date which was subsequently set for March 1, 1990.

(m) No resolution was made on the motion to abandon because of the resignation of the appointed trustee. The Court ordered the attorney for the bank to prepare an order indicating which property he wanted abandoned. This was never consummated.

(n) Subsequently, on January 10, 1990, Ernest M. Douglas was appointed trustee. On February 20, 1990, The trustee filed a notice of intent to abandon real estate. The law clerk subsequently informed Petitioner that there would be no hearing on the adversarial proceeding. On March 5, 1990, trustee Douglas filed the second notice of intent to abandon real estate. Debtor Moore and Petitioner Harris filed objections to the abandonment.

(o) On May 30, 1990 an order was issued setting the hearing on objection to abandonment and claimed exemptions.

(o) On June 8, 1990, Petitioner Harris filed a motion to void the Deed of trust which was scheduled to be heard on July 10, 1990.

(p) A hearing was held on July 10, 1990 on the objections by Petitioner Harris to the Motion for Abandonment by the Bank and the trustee's intent to abandon the property. The trustee did not appear. In this hearing, the Motion to abandon the real estate by the Bank was denied, the objection to the trustee's intent to abandon was sustained and the Court ordered the trustee to sell the property. Motion by Petitioner to Void

deed of trust was denied as improperly plead. The Court issued a written order on August 29, 1990.

(q) On September 12, 1990, Stephen L. Thompson, Counsel for Creditor Matthew Sidney and Clara Boggs filed a motion to alter or amend or in the alternative to reconsider the order of August 29, 1990. Inasmuch as counsel Stephen L. Thompson is a member of the firm of Cecil, Barth & Thompson, formerly known as Cecil, Pearson & Barth, it is the opinion of the Petitioner that the Honorable Ronald G. Pearson should have recused himself from any further proceedings in this matter.

(r) On October 22, 1990, an order was issued discharging Debtor Joseph Moore.

(s) On December 11, 1990, Petitioner filed the second Petition for an adversarial proceeding.

(t) On December 19, 1990, a hearing was held on the Boggs' motion to reconsider the Court's order of August 29, 1990, pursuant to the July 10, 1990 hearing.

(u) On January 7, 1991, the court issued an order granting the motion to reconsider and sustained the trustee's intent to abandon and overruled the objection to the proposed abandonment.

(v) On March 8, 1991, the substitute trustee Mark Sergeant held an auction to sell both tracts of land including a 1972 Douglas Trailer situated on one of the tracts. A member of the public bid $65,000 which was turned down. Subsequently the President and CEO of the First National Bank of Spencer offered $68,000 for the tracts of land which was accepted.

(w) On March 14, 1991, Petitioner filed a Motion to Remove Pending Cases in the Circuit Court of Roane County to the Bankruptcy Court. On April 1, 1991, the Court denied the motion. The Court's certificate of mailing shows a posting date of mailing to be 4/3/91 and a Docket entry of 4/9/91. This order was not received by the Petitioner until 4/11/91. See Appendices E and F.

(x) On March 28, 1991, The First National Bank of Spencer sold the Harris tract known as 176 acres along with the 1972 Douglas Mobile Home to Gary Granoff for the sum of $40,000. On March 22, 1991 in an affidavit for repossession of a vehicle, namely the mobile home, the senior loan officer of the First National Bank indicated that the amount of the lien covering the repossessed vehicle was $60,000 and that the purchase price of the vehicle plus land was $68,000. On or about December 21, 1990, Brenda King, called by the FNB gave testimony to the Bankruptcy Court that the property was valued at approximately $50.00 per acre or a total of $8,800 for the land. Petitioner believes on information and belief that on April 11, 1991, Mr. Granoff sold the trailer to the Mountaineer Mobile Home, Inc. for $15,000.

(y) On April 1, 1991, the Court issued an order granting the Boggs' and the Bank's motion to dismiss the petition for an adversarial Hearing. The Court's certificate of mailing shows the entry date of 4/1/91 and the mailing date of 4/1/91, however this was not received by the Petitioner until 4/10/91. See Appendices E and G.

(z) On August 9, 1991, the FNB sold to John and Helen Whitehead the tract known as the Boggs' tract of 156 acres more or less for the amount of $58,500.

(aa) The order of the Bankruptcy Judge which denied the petition to remove pending cases and granted the motion to dismiss the adversial petition was appealed to the United States District Court for the Southern District of West Virginia. This Court denied the appeal on the ground that it was not timely filed. Petitioner appealed this decision to the Fourth Circuit Court of Appeals which was denied per curiam. The judgment of the Fourth Circuit Court of Appeals took effect on February 27, 1992.

(bb) As collateral holder, petitioner paid real estate taxes, personal property taxes, telephone bills, electrical bills and other expenses associated with the 176 acres during the entire length of time of the proceedings involved herein.

REASONS FOR GRANTING THE WRIT

(1) In the order of the Bankruptcy Court denying removal of pending case from the Circuit Court in Roane County, West Virginia, the date for the filing of the notice of appeal by petitioner should be April 19, 1991. That was the date when the Order of the Court was entered on the docket which is the controlling date to be used. See In re: Mike 796 F. 2d 382, 14 BCD 1409, 15 CBS 2nd 450 (CA 1985).

Further, In re: Allustiarte, 848 F.2d 116 (CA 9, 1988), held that the order of the Bankruptcy Court was never actually entered on the docket sheets, of

the persons filing notices of appeal and that the time for filing a notice of appeal never commenced; thus, the Court erred in ruling the appeal was untimely. Vernon 811 F.2d at 1276.

Here, petitioner's order was not entered on the docket sheet until nine days after the Court's decision and should be the date when the filing of the notice to appeal began to toll.

(2) The order granting the motion to dismiss Petitioner's request for an adversarial hearing was entered on April 1, 1991 as shown on the docket, however, the Court should take into consideration the "unique circumstances" involved when Petitioner did not receive the order until April 10, 1991. This also applies to the motion to remove the cases as noted above. See Thompson v. Immigration and Naturalization Service, 375, U.S. 384, 84 S.Ct, 11 L.Ed. 404 (1964) also Harris Lines v. Cherry Meat Packers 371 U.S. 215, 83 S.Ct 283, 9 L.Ed. 2d. 261 (1962) I.D. at 217, 83 S.Ct. 283.

(3) The mail received by Petitioner from the Bankruptcy Court did not have a date stamp which is normal for mail received in ordinary course of business, however, the Court's mail in many instances do not provide any dates as to mailing, however, in some instances a date is posted on mail by the Courts (See appendices H). Petitioner asserts that the receipt of mail from the Bankruptcy Court on April 10th and 11th is a "unique circumstance."

(4) Petitioner is domiciled in Washington, D. C. and the Courts are located in Parkersburg and Charleston, West Virginia. It is common knowledge that the

United States Postal Service can take as long as 10 days at times to process and deliver the mail.

The envelopes in which petitioner received the orders from the Court have no date stamps. Thus petitioner has no way of proving whether the negligence involved as to the receipt of the mail on April 10th and 11th, was the fault of the Postal Service or of the Court.

Therefore, petitioner must conclude that under the doctrine of "excusable neglect," the notice of appeal was timely filed. See In re: Estate of Butler's Tire & Battery Co., Inc. 592 F.2d 1028, 4 BCD 1304 (CA 1979).

CONCLUSION

The equitable claim of Petitioner is compelling and the failure of the appellant court to fully examine the record and the merits involved is questionable. Based upon the reasons above, the notice of appeal was timely filed. Petitioner asks this Court to grant a writ of *certiorari*.

Dated this 22nd day of June, 1992.

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APPENDIX

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 91-1767

In Re: JOSEPH MOORE,

Debtor.

DAVID G. HARRIS,

Plaintiff-Appellant,

v.

FIRST NATIONAL BANK OF SPENCER; CLARA BOGGS; SIDNEY BOGGS,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of West Virginia, at Parkersburg. Charles H. Haden, II, Chief District Judge. (CA-91-471-A, BK-88-40064)

Submitted: February 3, 1992

Decided: February 27, 1992

Before WIDENER, HAMILTON, and LUTTIG, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

David G. Harris, Appellant Pro Se. Thomas N. Whittier, HEDGES, JONES, WHITTIER & HEDGES, Spencer, West

Virginia; Stephen L. Thompson, CECIL, BARTH & THOMPSON, Charleston, West Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

OPINION

PER CURIAM:

David G. Harris appeals from the district court's order dismissing his untimely appeal of an adverse bankruptcy court order. Our review of the record and the district court's opinion discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court.* *Harris v. First National Bank of Spencer*, No. CA-91-471-A, BK-88-40064 (S.D.W. Va. Aug. 15, 1991). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

* We also deny Harris's Motion to Supplement the Record on Appeal.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

PARKERSBURG DIVISION

CIVIL ACTION NO. A.:91-0471

IN RE: JOSEPH MOORE, Debtor

DAVID G. HARRIS,

Appellant,

vs.

FIRST NATIONAL BANK OF SPENCER, et al,

Appellees.

A TRUE COPY, Certified this day

AUG 14 1991

RONALD D. LAWSON, Clerk
By ????

JUDGMENT ORDER

In accordance with the Memorandum Opinion and Order entered this date, the Court hereby ORDERS as follows:

1. That the Appellant's notice of appeal was filed untimely pursuant to Bankruptcy Rule 8002;

2. The Court awards the costs of this untimely appeal to Appellees; and

3. That this action is dismissed and stricken from the docket of this Court.

The Clerk is directed to send a copy of this Judgment Order to counsel of record.

ENTER: August 14, 1991

Charles H. Haden II, Chief Judge

Charles H. Haden II, Chief Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

PARKERSBURG DIVISION

CIVIL ACTION NO. A:91-0471

IN RE: JOSEPH MOORE, Debtor

DAVID G. HARRIS,

Appellant,

vs.

FIRST NATIONAL BANK OF SPENCER, et al,

Appellees.

A TRUE COPY, Certified this day

AUG 14 1991

RONALD D. LAWSON, Clerk
By ????

MEMORANDUM OPINION AND ORDER

Pending before the Court is an appeal from final orders entered April 1, 1991, by the Honorable Ronald G. Pearson, United States Bankruptcy Judge for the Southern District of West Virginia, denying Appellant's claims for an adversary hearing on a petition filed with the Clerk and served upon the respondents named therein and the denial of the Appellant's motion to remove to the Bankruptcy Court three cases pending in the Circuit Court of Roane County, West Virginia. Appellant Harris filed a petition for an adversary hearing on December 11, 1990. He filed a motion to allow him to remove three cases

pending in the Circuit Court of Roane County to the Bankruptcy Court on March 14, 1991. The Bankruptcy Judge entered a final order on April 1, 1991, dismissing Appellant Harris' petition for an adversary hearing and denying his motion for removal. On April 14, 1991, Appellant Harris filed his "Notice of Appeal."

Bankruptcy Rule 8002 provides that the time for filing a notice of appeal from a final judgment of a bankruptcy judge to a district court is ten days. Additionally, each appellant is to file a notice of appeal with the Clerk of the Bankruptcy Court within the time proscribed by law. Thus, in order to invoke the appellate jurisdiction of the district court, an appellant must file timely a notice of appeal with the bankruptcy court clerk.

Appellant Harris filed his notice of appeal on April 14, 1991. Clearly his notice of appeal is untimely. Therefore, the Court concludes that Appellant Harris did not properly invoke the appellate jurisdiction of the district court, and consequently, the district court lacks jurisdiction. *See Richard L. Smith v. Dairymen, Inc. and the Farm Loan Corp. et al,* 790 F.2d 1107 (4th Cir. 1986), citing *Matter of Ramsey,* 612 F.2d 1220, 1221-22 (9th Cir. 1980) (untimely filing of notice of appeal deprives district court of jurisdiction to review bankruptcy court's order or judgment).

The Clerk is directed to send a copy of this Order to counsel of record.

ENTER: August 14, 1991

Charles H. Haden II, Chief Judge

Charles H. Haden II, Chief Judge

APPENDIX C

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHEASTERN DISTRICT OF WEST
VIRGINIA**

**Case No. 88-40064
Chapter 7**

In re
JOSEPH MOORE,

Debtor

DAVID G. HARRIS,

Plaintiff

v.

FIRST NATIONAL BANK OF SPENCER and
CLARA BOGGS and SYDNEY BOGGS,

Defendants

A.P. 90-0133

ORDER GRANTING MOTION OF CLARA BOGGS AND SYDNEY BOGGS TO DISMISS; GRANTING MOTION OF FIRST NATIONAL BANK OF SPENCER TO DISMISS

It appearing to the Court that Stephen L. Thompson, counsel for Defendants Clara Boggs and Sydney Boggs, and Thomas N. Whittler, counsel for Defendant First National Bank of Spencer, did each file and serve a motion to dismiss the pleading filed against the defendants herein, and that the same motions were duly served upon the Plaintiff, wherein counsel for the defendants named above represented to the Court that the defendants were entitled

to the relief requested in their motions to dismiss in that the Court lacks jurisdiction over the subject matter by virtue of the awarding by this Court of a discharge of the underlying bankruptcy proceedings filed by the Debtor and the Plaintiff, and assigned other grounds in support of the motions.

Upon the motions filed herein and notice thereof duly served, after due consideration of the representations of counsel and review of the pleadings filed herein, it is

ORDERED that the Petition for an Adversary hearing filed December 11, 1990 by David G. Harris filed against the defendants, Clara Boggs and Sydney Boggs, and also filed against the First National Bank of Spencer, be dismissed.

Entered: 4-1-91

/s/ Ronald G. Pearson
Ronald G. Pearson, Judge

APPENDIX D

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

Case No. 88-40064
Chapter 7

In re
JOSEPH MOORE,

Debtor

Liquidation

ORDER DENYING MOTION TO REMOVE PENDING CASES IN THE CIRCUIT COURT OF ROANE COUNTY

Upon consideration of the motion filed by David G. Harris *pro se* to remove to this Court three cases pending in the Circuit Court of Roane County, West Virginia, and upon consideration of the response of Sydney Boggs and Clara Boggs to the motion to remove, as well as consideration of the applicable Bankruptcy Rule, the Court finds that the motion to remove was not filed within the time provided by Bankruptcy Rule 9027(a)(2) or (a)(3). Therefore, it is

ORDERED that the motion to remove pending cases in the Circuit Court of Roane County, filed March 14, 1991 by David G. Harris, is denied.

Entered: April 1, 1991

/s/ Ronald G. Pearson
Ronald G. Pearson, Judge

APPENDIX E

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

Case No. 88-40064
Chapter 13 converted to Chapter 7

IN RE:
JOSEPH MOORE

Debtor

DAVID G. HARRIS

Plaintiff,

v.

FIRST NATIONAL BANK OF SPENCER,
and
CLARA BOGGS and SYDNEY BOGGS,

Defendants

Adversary No. 90-0133

NOTICE OF APPEAL

David G. Harris, the plaintiff, appeals to the United States District Court Bankruptcy Appellate Panel from the final orders of Bankruptcy Court entered on April 1, 1991, yet not on the docket sheets and received by plaintiff on April 10, 1991 and April 11, 1991 respectfully. The parties to the orders appealed from and the names and addresses of their respective attorneys are as follows:

Joseph Moore
Post Office Box 357
Spencer, W. Virginia 25276

Ernest A. Douglass, Esq.
United States Trustee
Post Office Box 472
Parkersburg, W. Virginia 25102

Hedges, Jones, Whitter & Hedges
Orton Jones, Esq.
Post Office Box 7
Spencer, W. Virginia 25276

Cecil, Barth & Thompson
Stephen L. Thompson, Esq.
Post Office Box 129
Charleston, W. Virginia 25321

/s/ David G. Harris
David G. Harris, pro se
507 -C- Street, Northeast
Washington, D.C. 20002
(202) 546-6666

Dated April 14, 1991

APPENDIX F

Docket as of April 18, 1991 1:09 pm
Page 16

Proceedings include events between 1/1/1 and 4/18/91.
88-40064 In re: Joseph (NMN) Moore

3/18/91	155	Response By Creditor Matthew Sidney and Clara Boggs To [153-1] Motion To Remove Pending Cases in Circuit Court of Roane Co to Bankruptcy Court by David G. Harris. (tp) [EOD 3/19/91] [88-40064]
3/18/91	156	Certificate Of Service By Stephen L. Thompson for Creditor Matthew Sidney and Clara Boggs Of [155-1] Response by Matthew Sidney and Clara Boggs . (tp) [EOD 3/19/91] [88-40064]
4/1/91	157	Order Denying [153-1] Motion To Remove Pending Cases in Circuit Court of Roane Co to Bankruptcy Court by David G. Harris . (sh) [EOD 4/3/91] [88-40064]
4/3/91	158	Courts Certificate of Mailing Re: [157-1] Order . Mailed To: B (gb) [EOD 4/9/91] [88-40064]
4/8/91	159	Response By Creditor David G. Harris To [155-1] Response by Matthew Sidney and Clara Boggs . (gb) [EOD 4/9/91] [88-40064]
4/8/91	160	Certificate Of Service By Creditor David G. Harris Of [159-1] Response by David G. Harris . (gb) [EOD 4/9/91] [88-40064]

APPENDIX G

Docket as of April 18, 1991 1:11 pm
Page 3

Proceedings include events between 1/1/1 and 4/18/91.

90-133 David G. Harris, et al v. .First National Bank of Spencer, et al

1/24/91	12	Certificate Of Service By David G. Harris for Plaintiff David G. Harris Of [11-1] Response by David G. Harris . (tp) [EOD 1/25/91] [90-133]
4/1/91	15	Order Granting [4-1] Motion To Dismiss Case by Sydney Boggs, Clara Boggs Granting [2-1] Motion To Dismiss Case by First National Bank of Spencer . (ep) [EOD 4/1/91] [90-133]
4/1/91	16	Courts Certificate of Mailing Re: [15-1] Order . Mailed To: C (ls) [EOD 4/1/91] [90-133]
4/18/91	17	Notice Of Appeal By David G. Harris Appeal Designation Due: 4/29/91 RE: [15-1] Order (tc) [EOD 4/18/91] [90-133]

APPENDIX H

RONALD D. LAWSON, CLERK
UNITED STATES DISTRICT COURT
P.O. BOX 1526
PARKERSBURG, WEST VIRGINIA 26101

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE $300

BEVERLY GREATHOUSE
CLERK OF THE CIRCUIT COURT
P.O. BOX 122
SPENCER, WEST VIRGINIA 25276

RONALD D. LAWSON, CLERK
UNITED STATES DISTRICT COURT
P.O. BOX 1526
PARKERSBURG, WEST VIRGINIA 26101

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE $300

RONALD D. LAWSON, CLERK
UNITED STATES DISTRICT COURT
P. O. BOX 2546
CHARLESTON, WEST VIRGINIA 25329

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE $300

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
500 QUARRIER ST., ROOM 2201
CHARLESTON, WEST VIRGINIA 25301

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CHARLESTON, WEST VIRGINIA 25301

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PENALTY FOR PRIVATE USE $300

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SUPREME COURT OF THE UNITED STATES
WASHINGTON, DC 20543

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U.S.MAIL

CLERK'S OFFICE
U. S. COURT OF APPEALS
FOR THE FOURTH CIRCUIT
RICHMOND, VIRGINIA 23219

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Department of the Treasury–656

Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

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Supreme Court, U.S.
FILED
SEP 9 1992
OFFICE OF THE CLERK

No. 91-2041

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

DAVID G. HARRIS,

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FIRST NATIONAL BANK OF SPENCER and,
CLARA BOGGS and SYDNEY BOGGS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

---

SUPPLEMENTAL BRIEF

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6 pp

STATEMENT

On page 6a of the Petition, the order of Chief Judge Hayden shows that the notice of appeal was filed on April 14, 1991. (See Appendix B of the Petition.)

On Page 13a of the Petition, which is the docket, (See Appendix G of the Petition) the Secretary to the Clerk of the Court (See Exhibit "A" attached hereto) indicates that the notice of Appeal was filed on April 18, 1991. (See Page 13A of Appendix G of the Petition.) This would indicate that the mail took at least 4 days to go from Washington, D. C. to Charleston, West Virginia.

According to the Secretary to the Clerk of the Court, the postal service picks up the mail from the Court at 3:00 and 5:00 each day. Based on this information according to Exhibit "A" attached hereto, the probability of when the mail would have left Charleston, WVA would be on the following day, April 2, 1991. Since it can be assumed that it takes 4 days for mail to go from Washington, D. C. to Charleston, West Virginia, appellant should have received the order on the 6th, when in fact, the order was received on the 10th of April (See Appendix E of the Petition.) If the time for tolling began on the 6th of April, then appellant's notice of appeal was timely filed.

In the second case, Docket No. 88-40064, the docket (See Appendix F of the Petition) indicates that the order was signed on April 1, 1991, the Court's certificate of services shows the mailing date of April 3, 1991 and the entry onto the docket was made on April 9, 1991. (See Page 12a of Appendix F of the Petition.)

According to the Secretary to the Clerk of the Court, the postal service picks up mail at 3:00 and 5:00 each day. Based on this information according to Exhibit "A" attached hereto, the probability of when the mail would have left Charleston, WVA would be on the following day, April 4, 1991. Appellant did not receive the two orders of Judge Pearson of April 1, 1991 until April 10th and 11th (See Appendix F and Appendix G of the Petition).

Assuming arguendo that the order which was mailed on the 3rd of April, 1991, did not leave Charleston, West Virginia until April 4, 1991 and in accordance with Judge Hayden's notice of filing date of filing to be April 14, 1991, which would add 4 days to the date of service and since April 3rd plus 4 days would make the delivery date in Washington to be April 7th. The notice of appeal was timely filed. The order of Judge Hayden did not address this particular case, nor did the Appellate Court in Richmond. This notice of appeal has never been ruled upon.

It is obvious that litigants (petitioner) are at the mercy of the Clerk of the Courts and the United States Postal Service, who are many times inefficient. What is to be done? Also, the signing of an order by a Judge after 3:00 P.M. would not be mailed until the following day, if then. Must petitioner have called the Court long distance on a daily basis and asked if the Court has reached a decision in his case so that he could be certain of filing a timely notice of appeal? Clearly, this is not only absurd, it is inequitable.

Also if the Judge signs the order after 3:00 p.m., then it is reasonable to assume that the order would not have been mailed until the following afternoon.

This supplemental brief is submitted in order to more clearly clarify the facts and issues involved herein.

Dated this 9th day of September, 1992.

DAVID G. HARRIS, Pro Se
507 - C - Street, Northeast
Washington, D. C. 20002
Telephone (202) 546-6666

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
UNITED STATES COURTHOUSE
SAMUEL L. KAY 500 QUARRIER STREET, ROOM 2201 TELEPHONE:
CLERK 304-347-4114
CHARLESTON, WEST VIRGINIA 25301

MAILING ADDRESS:
P. O. BOX 3924
CHARLESTON, WV 25339

August 11, 1992

David G. Harris
507 - C - Street, N.E.
Washington, DC 20002

Re: AP #90-133

Dear Mr. Harris:

Pursuant to our phone conversation on August 10, 1992, and in response to your letter dated August 7, 1992, please be advised that there are no document numbers 13 and 14 in Adversary Proceeding Number 90-133. It has been determined that two documents were docketed in the AP and then it was discovered that the two documents did not belong in the AP and were removed from the case. The document numbers were not reset in the computer so there is a gap in those numbers.

During our conversation you asked for an explanation of several other matters relating to document entries. The date in the left hand column indicates the date the document was filed in our office or the date an order was entered by the Judge or the date an Order or Notice was mailed to creditors and other parties in interest. The Entry on Docket (EOD) date indicates the date the document or order was entered into the BANCAP system by the docket clerks.

In answer to your last question, our mail is taken to the first floor of our building for pickup by the Postal Service at 3:00 pm and 5:00 pm each day.

Sincerely,

/s/ Gloria J. Bailey
Gloria J. Bailey
Secretary to the Clerk